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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JUSTIN TROILO,** ) Case No.  
Plaintiff, )  
vs. )  
**FMS, INC.,** ) **COMPLAINT FOR VIOLATION  
OF THE PENNSYLVANIA FAIR  
CREDIT EXTENSION  
UNIFORMITY ACT,  
PENNSYLVANIA UNFAIR TRADE  
PRACTICES AND CONSUMER  
PROTECTION LAW, FEDERAL  
FAIR DEBT COLLECTION  
PRACTICES ACT, AND  
TELEPHONE CONSUMER  
PROTECTION ACT**

Defendant.

## I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Pennsylvania Fair Credit Extension Uniformity Act and Pennsylvania Unfair Trade Practices and Consumer Protection Law. Furthermore, Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter "FDCPA"), which prohibit debt collectors from

1 engaging in abusive, deceptive, and unfair practices. Ancillary to the claims  
2 above, Plaintiff further alleges claims for Defendant's violations of the Telephone  
3 Consumer Protection Act., 47 U.S.C. §227, *et seq.* (hereinafter "TCPA").  
4

5 **II. JURISDICTION**  
6

7 2. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d).  
8

9 **III. PARTIES**  
10

11 3. Plaintiff, Justin Troilo ("Plaintiff"), is a natural person residing in  
12 Montgomery County in the state of Pennsylvania, and is a "consumer" as defined  
13 by the FDCPA, 15 U.S.C. §1692a(3).  
14

15 4. At all relevant times herein, Defendant, FMS, Inc, ("Defendant"),  
16 was a company engaged, by use of the mails and telephone, in the business of  
17 collecting a debt from Plaintiff which qualifies as a "debt," as defined by 15  
18 U.S.C. §1692a(5). Defendant regularly attempts to collect debts alleged to be due  
19 another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C.  
20 §1692a(6).  
21

22 **IV. FACTUAL ALLEGATIONS**  
23

24 5. At various and multiple times prior to the filing of the instant  
25 complaint, including within the one year preceding the filing of this complaint,  
26 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.  
27  
28

1       6.     In July 2012, Defendant contacted Plaintiff in connection with an  
2 attempt to collect an alleged debt.  
3

4       7.     Defendant contacted Plaintiff at (415) 577-3285, at times and places  
5 that were known to be inconvenient, including but not limited to, multiple calls  
6 per day.  
7

8       8.     Defendant contacted Plaintiff at (415) 577-3285 with such a  
9 frequency as to constitute harassment under the circumstances, including but not  
10 limited to, multiple calls per day.  
11

12       9.     Defendant called Plaintiff's cell phone, (415) 577-3285, using pre-  
13 recorded messages in connection with an attempt to collect an alleged debt.  
14

15       10.    Defendant failed to disclose during each and every communication,  
16 that the communication was from a debt collector attempting to collect an alleged  
17 debt.  
18

19       11.    Defendant contacted Plaintiff's brother, a third party to this action,  
20 for purposes beyond obtaining Plaintiff's location information.  
21

22       12.    Defendant contacted Plaintiff's brother, a third party to this action,  
23 disclosing the identity of Defendant and the existence of an alleged debt owed by  
24 Plaintiff, without being expressly requested.  
25

26       ///  
27

28       ///

**COUNT I: VIOLATION OF THE PENNSYLVANIA FAIR CREDIT  
EXTENSION UNIFORMITY ACT**

13. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

14. The Pennsylvania Fair Credit Extension Uniformity Act (“PaFCEUA”) 73 P.S. § 2270.1 *et seq.* prohibits harassing and deceptive conduct by creditors while engaging in the practice of collecting a debt from consumers.

15. Section 2270.5 of the PaFCEUA allows consumers to recover damages against creditors who engage in unfair and deceptive debt collection practices under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“PUTCPL”).

16. Plaintiff is a “consumer” as defined by § 2270.3 of the PaFCEUA.

17. Defendant is a “creditor” as defined by § 2270.3 of the PaFCEUA.

18. Defendant's conduct violated the PaFCEUA in multiple ways, including but not limited to:

- a) Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff;
- b) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff;

- c) Causing Plaintiff's telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff;
- d) Causing a telephone to ring repeatedly or continuously to annoy;
- e) Communicating, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute an harassment to Plaintiff under the circumstances;
- f) Failing to provide Plaintiff with the notices required by 15 USC § 1692g, either in the initial communication with Plaintiff, or in writing within 5 days thereof;
- g) Falsely representing the character, amount, or legal status of Plaintiff's debt;
- h) Using false representations and deceptive practices in connection with collection of an alleged debt from Plaintiff;
- i) Failing to notify Plaintiff during the initial communication with Plaintiff that the communication was an attempt to collect a debt and any information obtained would be used for that purpose;
- j) Failing to notify Plaintiff during each collection contact that the communication was from a debt collector.

1       19.       As a result of the above violations of the PaFCEUA Plaintiff  
2       suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation,  
3       embarrassment, mental anguish and emotional distress, and Defendant is liable to  
4       Plaintiff for Plaintiff's actual damages, statutory damages, and costs and  
5       attorney's fees.  
6  
7  
8  
9

10       **COUNT II: VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE  
PRACTICES AND CONSUMER PROTECTION LAW**

11  
12       20.      Plaintiff hereby incorporates all facts and allegations set forth in this  
13       Complaint by reference as if fully set forth at length herein.  
14

15       21.      Defendant's conduct as set forth above constitutes an unfair or  
16       deceptive practice within the meaning of the Pennsylvania Unfair Trade Practices  
17       and Consumer Protection Law, 73 P.S. §201-1, et seq.  
18

19       22.      Defendant's violation of the Pennsylvania Unfair Trade Practices  
20       and Consumer Protection law has caused Plaintiff to suffer the damage set forth  
21       hereinabove.  
22

23       23.      Plaintiff is entitled to triple damages and attorneys' fees as a result of  
24       Defendant's conduct, pursuant to 73 P.S. §201-9.2.  
25

26       **COUNT III: VIOLATION OF FAIR DEBT  
COLLECTION PRACTICES ACT**

1 24. Plaintiff reincorporates by reference all of the preceding paragraphs.  
2

3 25. Defendant's conduct violated the FDCPA in multiple ways,  
4 including but not limited to:

- 5 a) Communicating with Plaintiff at times or places  
6 which were known or should have been known to be  
7 inconvenient for Plaintiff (§1692c(a)(1));  
8
- 9 b) Engaging in conduct the natural consequence of  
10 which is to harass, oppress, or abuse Plaintiff  
11 (§1692d));  
12
- 13 c) Causing Plaintiff's telephone to ring repeatedly or  
14 continuously with intent to harass, annoy or abuse  
15 Plaintiff (§1692d(5));  
16
- 17 d) Causing a telephone to ring repeatedly or  
18 continuously to annoy Plaintiff (Cal Civ Code  
19 §1788.11(d));  
20
- 21 e) Communicating, by telephone or in person, with  
22 Plaintiff with such frequency as to be unreasonable  
23 and to constitute an harassment to Plaintiff under the  
24 circumstances (Cal Civ Code §1788.11(e));  
25
- 26 f) Failing to provide Plaintiff with the notices required  
27 by 15 USC § 1692g, either in the initial  
28 communication with Plaintiff, or in writing within 5  
days thereof (§1692g(a));  
29
- 30 g) Falsely representing the character, amount, or legal  
31 status of Plaintiff's debt (§1692e(2)(A));  
32

- 1 h) Using false representations and deceptive practices  
2 in connection with collection of an alleged debt from  
3 Plaintiff (§1692e(10)).
- 4
- 5 i) Failing to notify Plaintiff during the initial  
6 communication with Plaintiff that the  
7 communication was an attempt to collect a debt and  
8 any information obtained would be used for that  
9 purpose (§1692e(11));
- 10
- 11 j) Failing to notify Plaintiff during each collection  
12 contact that the communication was from a debt  
13 collector (§1692e(11)).

14 26. As a result of the above violations of the FDCPA Plaintiff suffered  
15 and continues to suffer injury to Plaintiff's feelings, personal humiliation,  
16 embarrassment, mental anguish and emotional distress, and Defendant is liable to  
17 Plaintiff for Plaintiff's actual damages, statutory damages, and costs and  
18 attorney's fees.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully prays that judgment be entered  
21 against the Defendant for the following:

- 22 A. Declaratory judgment that Defendant's conduct  
23 violated the FDCPA;
- 24 B. Actual damages;
- 25 C. Statutory damages;
- 26 D. Costs and reasonable attorney's fees; and,
- 27 E. For such other and further relief as may be just and proper.

1  
2 **COUNT IV: VIOLATION OF TELEPHONE CONSUMER**  
3 **PROTECTION ACT**

4  
5 27. Plaintiff hereby incorporates all facts and allegations set forth in this  
6 Complaint by reference as if fully set forth at length herein.

7 28. Defendant conduct violated the TCPA by:

8  
9 a) using any automatic telephone dialing system or an artificial or pre-  
10 recorded voice to any telephone number assigned to a paging  
11 service, cellular telephone service, specialized mobile radio service,  
12 or other radio common carrier service, or any service for which the  
called party is charged for the call (47 USC §227(b)(A)(iii)).

13 29. To the extent that Defendant's actions, counted above, violated the  
14 TCPA, those actions were done knowingly and willfully

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays that judgment be entered  
17  
18 against the Defendant for the following:

19  
20 A. Declaratory judgment that Defendant's conduct  
21 violated the TCPA;  
22 B. Actual damages;  
23 C. Statutory damages for willful and negligent violations;  
24 D. Costs and reasonable attorney's fees,  
25 E. For such other and further relief as may be just and proper

1 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**  
2  
3

4 Respectfully submitted this 20th day of December, 2012.  
5  
6

7 By: /s/ Cynthia Z. Levin  
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